ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

COMMENTS OF LDDS WORLDCOM

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service providers, and voluntary call control restrictions, such as toll blocking or toll limiting services -- should be added as well. This list should be reexamined periodically to determine whether the choices dictated by the market require expansion of the definition. However, so long as there are multiple providers of service in the local markets, there is no need for the FCC to oversee service quality through technical standard setting or reporting requirements.

The current universal service system, which is funded primarily by IXCs and other users of interstate access, is incompatible with the 1996 Act. The system's funding mechanisms 1) do not impose equitable, nondiscriminatory obligations on contributors, 2) do not create direct, explicit, and specific distribution procedures, 3) are not based on actual cost, and 4) do not grant competitively neutral opportunities to competing providers. LDDS WorldCom also believes that the levels of universal service support should be derived from the cost of providing service, not from the LECs' current rates. As a result, LDDS WorldCom generally supports the joint Benchmark Costing Model approach advocated by MCI, Sprint, and others for rural and high-cost areas. In addition, for low-income consumers, the Act dictates that the more narrowly-targeted Lifeline and Link Up programs should remain in place. As a result, the current use of means-testing is the best method for readily identifying the appropriate group of low-income consumers.

The Act plainly requires that a broad universe of telecommunications service providers, including any provider of interstate telecommunications services, must contribute to universal service funding. This universe should apply to both rural or high-cost areas and for low-income consumers in order to spread the burden equitably and to sustain the availability of affordable consumer rates. These service providers include LECs, IXCs, competitive access providers, and commercial mobile radio service providers. LDDS WorldCom believes that some enhanced services may also fall within the statutory definition of telecommunications services that are required to contribute to the preservation and advancement of universal service. At the very least, Voice-Over-Net service providers, which provide free or nominally-priced interstate and international telephone services over the Internet, must be required to contribute their fair share to universal service. At present, because VON services have not been formally classified by the FCC as "enhanced services," and in fact do not meet the FCC's definition, they are not exempt from the requirement to pay interstate access charges and universal service support. To the extent that providers of VON services are offering free or nominally-priced long distance services based on their failure to pay access charges, and concomitant universal service contributions, they are encouraging uneconomic bypass of the current long distance network. Such bypass directly threatens the long-term stability of, and ultimately the very existence of, the universal service and access charge regimes.

The 1996 Act requires that contributing telecommunications providers utilize "specific, predictable, and sufficient mechanisms" established by the Commission, and that the "specific Federal universal service support" must be "explicit." The current universal service structure for rural and high-cost regions, and for low-income consumers, must be abandoned in favor of an explicit retail surcharge payable by all telecommunications service providers. To accomplish this, one means of recovering the subsidy would be for the Commission to increase the Subscriber Line Charge to cover the universal service costs. As an alternative, the Commission should create and levy an explicit surcharge based on the gross retail revenues of a telecommunications provider, less all payments made to other carriers, such as access charges and wholesale rates paid by resellers.

The Notice seeks comment on "the best approach to administer the universal service mechanisms fairly, consistently, and efficiently." LDDS WorldCom strongly supports the use of a neutral third party administrator to determine the amount of retail surcharges, collect receipts, distribute subsidy payments, and enforce eligibility criteria.

LDDS WorldCom urges the Commission and the Joint Board to act now to begin the mandated reform of interstate access charges and universal service. It is obvious that the current universal service support mechanisms, which are embedded in a subsidy-ridden access charge scheme, are contrary to the dictates of the 1996 Act because they not based on cost, are inequitable and discriminatory in collecting and disbursing funds, and are often not explicit. In addition, the current interstate access charge regime constitutes an unjust and unreasonable practice, and creates an unlawfully discriminatory classification for "like service" in violation of the Communications Act of 1934. It is obvious, then, that all subsidies, including universal service support, must be eliminated immediately from the interstate access charge system. The Commission's tentative position that CCL charges and LTS charges must be eliminated or significantly revised is a welcome first step. However, nothing short of a complete overhaul of the current access charge system will satisfy the dictates of the new Act.

In the interim, until final action is taken on a permanent plan by May 1997, the Commission and the Joint Board have a golden opportunity to ease the transition to cost-based access charges. LDDS WorldCom believes that urgent action is required now. In this proceeding, the FCC should completely eliminate the blatantly discriminatory linkage between interstate access charge rates, which are now paid by a select few telecommunications service providers, and the universal service obligations that must be paid by all telecommunications service providers. Although this task can be accomplished most easily by immediately reducing all interstate access charges to cost, other transitional alternatives are available as well. LDDS WorldCom suggests just one possibility:

- First, the LECs should be required to quantify (a) the Total Service Long Run Incremental Cost of providing interconnection to the LECs' local networks, including a reasonable profit to the LECs; (b) all federal universal service obligations; and (c) the remaining non-cost-based LEC "expenses" contained in access charges.

- Second, all non-cost-based LEC "expenses" must be removed from the access charge system. The LEC would be free to either absorb these "expenses" internally, or else pass them along to consumers in their retail rates.

- Third, all federal universal service obligations would be assigned to a separate interim funding pool, which would remain fully funded by explicit retail surcharges paid equally by all telecommunications service providers.

- Fourth, LEC interconnection agreements negotiated pursuant to Section 251 of the Act must include only actual interconnection cost (based on TSLRIC), including a reasonable LEC profit. All interconnectors must also pay the interim retail surcharge into the newly-formed funding pool to cover their interim universal service obligations.

- Fifth, the RBOCs cannot enter the in-region interLATA market until (a) interstate access charges have been set at cost, plus reasonable LEC profit, and (b) the final universal service funding mechanism has been adopted and implemented by the Joint Board.

Under this one illustrative proposal, the many interlocking requirements of the 1996 Act would be satisfied. At the same time, universal service would be protected, rates for local, access, and long distance services would be allowed to decline, and the LECs would be fully compensated on a cost plus profit basis. LDDS WorldCom urges the Commission to take advantage of the rare opportunity presented by this proceeding to establish an interim universal service plan now.

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WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to the Notice of Proposed Rulemaking ("Notice"), FCC 96-93, released by the Commission on March 8, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

I. LDDS WORLDCOM STRONGLY SUPPORTS THE NEW UNIVERSAL SERVICE MANDATES ESTABLISHED BY THE TELECOMMUNICATIONS ACT OF 1996

LDDS WorldCom welcomes the Commission's initiation of this proceeding. LDDS WorldCom has been a long-time participant in FCC and state universal service proceedings,[1] and most recently filed related comments in the FCC's increased subscribership docket.[2] LDDS WorldCom has consistently advocated a vigorous but narrowly-tailored universal service obligation, one that is shouldered by all service providers on a nondiscriminatory basis wholly independent of the local exchange carriers' ("LECs'") current

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[1] See, e.g., Comments of LDDS Communications, Inc., CC Docket No. 80-286, filed October 28, 1994.

[2] Comments of LDDS WorldCom, CC Docket No. 95-115, filed September 27, 1995.

interstate access charge regime.

Under the terms of the recently-enacted Telecommunications Act of 1996,[3] the FCC and the states are required to make revolutionary, far-reaching changes to the current structure of collecting and disbursing universal service subsidies -- changes necessary to permit a movement toward competition. The 1996 Act directs the Commission and a Joint Board to act only in accordance with certain guiding principles, which include: (1) "quality services" must be made available to consumers at "just, reasonable, and affordable rates;"[4] (2) "equitable" and "nondiscriminatory" contributions to universal service must be made by "all providers of telecommunications services."[5] and (3) new universal service support mechanisms must be "explicit," "specific," and "predictable."[6] The Act also provides that any "eligible telecommunications carrier" can receive and disburse universal service funds.[7] In short, all telecommunications service providers equally have both the obligation and the opportunity to serve the basic telephony needs of the American public.

When considering the issue of universal service (and soon, LEC interconnection obligations under Section 251), the Commission must recognize one basic fact: the Telecommunications Act of 1996 was enacted to enable and promote robust competition in all

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[3] Pub. L. No. 104-104. 110 Stat. 56 (1996), to be codified at 47 U.S.C. §§ 151 et seq. ("1996 Act"). For the sake of clarity, LDDS WorldCom will refer to the provisions of the 1996 Act using the specific section citations at which they will be codified.

[4] 1996 Act, Section 254(b)(1).

[5] 1996 Act, Section 254(b)(4).

[6] 1996 Act, Section 254(e); Section 254(b)(5).

[7] 1996 Act, Section 214(e)(1).

segments of the telecommunications industry. The 1996 Act was not adopted as a means of ensuring that any industry segment, including the incumbent LECs, will be protected from the inevitable effects of true competition. Many of the LECs may argue in this proceeding and elsewhere that any changes to the existing universal service and access charge regimes must make them whole for revenues "lost" in the competitive process. It must be stressed, however, that the 1996 Act is a revolutionary instrument that rejects the simplistic mantras of the status quo monopoly. As the Commission observes, the Act "makes clear that we are to take a new approach in designing support mechanisms for universal service...."[8] When the Joint Board equitably expands both the class of carrier contributors to universal service and the class of carriers eligible to receive support, incumbent LECs that want to cling to artificially-inflated revenue streams can and will be replaced. Any guarantee of revenue neutrality for the LECs is fundamentally incompatible with the explicit requirements of the Act, and with the fully competitive environment that the Act embraces.

II. THE NEW UNIVERSAL SERVICE PROGRAM MUST BE TAILORED TO SUPPORT COST-DERIVED RATES FOR A DISCRETE CLASS OF CONSUMER SERVICES, AND MUST UTILIZE EQUITABLE FUNDING AND DISBURSEMENT MECHANISMS THAT ARE EXPLICIT, PORTABLE, COMPETITIVELY NEUTRAL, AND NONDISCRIMINATORY

The Telecommunications Act of 1996 establishes universal service obligations to serve the unique needs of three different constituencies: (1) residents of "rural, insular, and high cost areas" of the United States;[9] (2) "low-income consumers";[10] and (3) schools, health care

[8] Notice at para. 39.

[9] 1996 Act, Section 254(b)(3).

providers, and libraries.[11] In these comments, LDDS WorldCom will focus on the first two universal service categories, but reserves the right to address the third category in reply comments.

The structure of the proposed universal service funding mechanisms differs in some respects for rural and high-cost regions versus low-income consumers. While support for rural and high-cost regions necessarily focuses on certain geographic areas and services, the support for low-income consumers targets individuals on a case-by-case basis. In addition, given the different goals of the respective funding mechanisms, the levels and types of support given for each category should be determined separately as well. Nonetheless, in terms of the services provided, and the contributors and distributors of funding, the two categories are more alike than dissimilar. Therefore, unless warranted by different treatments, LDDS WorldCom will address together the various universal service issues affecting both categories of universal service.

A. Any Telecommunications Provider Meeting The Statutory Definition Of An "Eligible Telecommunications Carrier" Should Be Able To Receive Universal Service Funds

The Notice seeks comment on which telecommunications service providers are eligible to receive universal service funds.[12] The 1996 Act states that any "eligible telecommunications carrier" designated by the pertinent state regulator is authorized to get

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[10] Id.

[11] 1996 Act, Section 254(b)(6); Section 254(h).

[12] Notice at para. 41.

universal service funding.[13] The states are required to authorize eligible carriers in all non-rural areas so long as the public interest is met.[14] In addition, as the Notice observes, the 1996 Act grants the Commission authority to base its universal service policies on any other principles that are consistent with the Act and the protection of the public interest.[15] As one such potential principle, the Notice queries "whether we should ensure that the means of distributing universal service support should be competitively neutral...."[16]

LDDS WorldCom provides long distance service to almost 800,000 residential and business subscribers across the United States. Many of these subscribers are located in rural or high-cost areas, and some are low-income. As the monopoly local exchange market becomes opened to competition for the first time, LDDS WorldCom would like the ability to broaden the services that it provides to its customers, including those in rural and high-cost areas, and low-income consumers, to include local services. In order to serve its customers' local service needs, in many areas LDDS WorldCom will lease network facilities from other carriers. By acquiring network facilities in this fashion, LDDS WorldCom and other carriers that enter the local market by the same method will step into the shoes of the underlying carrier, and should receive the universal service funding that would have gone to the underlying carrier.

The Act has established a pro-competitive universal service mechanism that combines the virtues of the marketplace and the social needs of providing affordable telephone

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[13] 1996 Act, Section 254(e).

[14] 1996 Act, Section 214(e).

[15] 1996 Act, Section 254(b)(7).

[16] Notice at para. 8.

service. The only way to ensure that these dual goals are achieved is through a competitively-neutral fund that allows any eligible carrier access to subsidies. Thus, LDDS WorldCom supports the Commission's proposal to adopt as an additional express principle that the criteria for determining eligible carriers under Section 214(e) must be applied in a "competitively neutral" manner. In line with this important principle, LDDS WorldCom supports giving universal service funding to as many carriers as meet the statutory definition of an "eligible telecommunications carrier." These subsidies should be fully portable, so that when a consumer selects a particular carrier, that carrier will then be eligible for universal service funding to help serve the consumer.[17] As a result, the incumbent LEC with above-average loop costs in rural or high-cost regions, or who serves low-income subscribers, should no longer be subsidized automatically by other carriers for its universal service costs. Instead, new market entrants would have equal footing to get the same level of subsidies. This approach is consistent with the Act because it avoids undue discrimination in favor of the incumbent LEC.

The Act specifies that an eligible carrier must be willing to offer and advertise its service, and must use "its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)...."[18] It is the retail provider serving the consumer, then, that is eligible to receive universal service support, not the wholesale provider. As a fundamental matter, the Commission

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[17] Dr. Robert Crandall of the Brookings Institution made this same point in his prepared oral presentation to the Federal-State Joint Board at its April 12 open meeting. <u>See</u> Oral Presentation of Dr. Robert Crandall, Senior Fellow, Brookings Institution, before the Open Meeting of the Federal-State Joint Board on Universal Service, Federal Communications Commission, Washington, D.C., April 12, 1996.

[18] 1996 Act, Section 214(e)(1)(A).

should find that the facilities referenced in the Act include not only facilities constructed and deployed by the carrier, but also facilities that are leased from incumbent LECs and other carriers. This is necessary because all carriers, regardless of technology or facilities used, must be able to meet all the needs of their consumers in rural or high-cost areas, and low-income consumers. Thus, a carrier that provides the requisite universal services using network elements leased at cost from the incumbent LEC or other carrier clearly qualifies as an eligible carrier under Section 214(e).[19] This conclusion is fully consistent with the Act, which seeks to open all telecommunications markets to competition. Allowing carriers using leased facilities to become "eligible telecommunications carriers" will be critical to giving consumers maximum choices to meet their telecommunications needs, and bringing the many benefits of competition to all consumers.

B. The Commission Should Adopt An Amended Version Of Its Proposed Core List Of Universal Services

The Notice spells out a list of telephone services that the Commission proposes would be included in the universal service obligation for rural and high-cost areas. This list includes voice grade access to the public switched network, touch-tone service, single party service, access to emergency 911 service, and access to operator services.[20] The Notice proposes that low-income consumers also have access to the same list of universal services.[21]

LDDS WorldCom agrees that each of the elements included in the proposed list

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[19] 1996 Act, Section 251(c)(3).

[20] Notice at para. 16.

[21] Notice at para. 50.

is an essential service which should be readily available to all present-day American consumers. LDDS WorldCom also suggests the inclusion of two other services as well. First, all consumers should have equal access to the "1+" long distance service provider of his or her choice. The ability to place a long distance call with one's carrier of choice is widely considered to be an intrinsic component of basic telephone service. Adding this obligation would be consistent with the universal service provisions of the Act, which specifically directs that consumers "shall have access to ... interexchange services."[22]

Second, and in keeping with the proposed obligation to enable consumers to access long distance services, the definition of universal service should also include voluntary call control restrictions, such as toll blocking or toll limiting services. In its recent comments in CC Docket No. 95-115,[23] LDDS WorldCom urged the Commission to allow consumers to voluntarily block their usage of long distance service as a means of tailoring their household calling patterns to their own unique financial situation.[24] This position is bolstered by a 1995 study which concludes that most marginal users leave the public switched network due to an

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[22] 1996 Act, Section 254(b)(3).

[23] Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, Notice of Proposed Rulemaking, issued July 20, 1995.

[24] Comments of LDDS WorldCom, CC Docket No. 95-115, at 3. At the same time, LDDS WorldCom strongly opposed any plan to prohibit the LECs from disconnecting local telephone service for a customer's failure to pay valid, owed long distance charges. LDDS WorldCom showed that such a proposal was unsupported by the evidence, did not constitute a narrow, targeted means of increasing subscribership, and would result in substantially higher collection, bad debt, and related expenses by long distance companies. Id. at 4-8. In addition, market forces unleashed by the 1996 Act will blur the distinction between local and long distance markets, making such a prohibition difficult to comply with in practice.

inability to control spending on usage-related charges, such as long distance service.[25] With the addition of these two elements suggested by LDDS WorldCom, consumers will have both ready access to the public telephone network for long distance calling, and the ability to voluntarily limit that access in self-guided ways.[26]

As the new Act makes clear, the accepted list of essential universal services is expected to evolve naturally over time, as other, more advanced telephone services become readily subscribed to by a "substantial majority" of the American public.[27] The Commission should require that the list of essential services be reexamined on a regular basis to determine whether the choices dictated by the market require an expansion of the definition. If certain other telecommunications services eventually meet this statutory criteria, LDDS WorldCom would support their inclusion in the definition of universal services.

The Notice asks whether universal service support should be limited to residential users, or should include single-line business users, or even all users.[28] LDDS WorldCom believes that Congress intended that the "consumers" residing in rural and high-cost regions that would be eligible for universal service support are not necessarily limited to residential subscribers. Small single-line businesses potentially encounter the same telephone expense

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[25] See Six Myths of Telephone Penetration: Universal Service from the Bottom Up, Rutgers University Project on Information Policy, January 1995, at 2, 12-14.

[26] The Commission also seeks comment on requiring IXCs to offer optional calling plans designed for low-income consumers. Notice at para. 55. LDDS WorldCom believes that such plans are not necessary at this time. Instead, as described in Section III below, the Commission should direct that interstate access charges be brought down to cost, which will lead to lower telephone rates for everyone.

[27] 1996 Act, Section 254(c)(1).

[28] Notice at para. 24.

problems in rural and high-cost areas that residential consumers there also face. The FCC should not artificially limit support in rural and high-cost regions only to residential consumers.

The Notice also seeks comment on other related definitional issues. To determine whether consumers have access to "quality services,"[29] LDDS WorldCom believes that the competitive market will ensure that service quality is more than adequate. There is no compelling need for FCC oversight, technical standard setting, or reporting requirements, so long as there are multiple providers of service in the local markets. In the meantime, before competition begins to develop in the local market, the states themselves can monitor the quality of the services provided by the incumbent LECs.[30]

Finally, the concept of an "affordable" rate queried in the Notice will differ depending on whether the rural/high-cost or low-income categories are involved.[31] Most low-income consumers will need a lower rate for telephone service than rural and high-cost consumers will require in their regions. Thus, as is discussed below, different mechanisms should be used to derive the proper levels of financial support for low-income and rural/high-cost consumers.

C. Universal Service Support Levels Should Be Calculated Based On Actual Or Estimated Service Costs, Not Incumbent LEC Rates

The Notice next seeks comment on the appropriate methodology to determine what

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[29] Notice at paras. 4, 68; see 1996 Act, Section 254(b)(1).

[30] The quality of services initially provided by the incumbent LECs to interconnecting interstate carriers is also important and should be addressed in the FCC's upcoming Section 251 interconnection proceeding.

[31] Notice at para. 4; see 1996 Act, Section 254(b)(1).

level of universal service support should be funded for both rural/high-cost areas and low-income consumers. Resulting rates are required to be "just, reasonable, and affordable."[32]

1. Rural/High-Cost Regions

LDDS WorldCom believes that the current Universal Service Fund ("USF") and dial equipment minute ("DEM") weighting supports found in Part 36 of the Commission's Rules,[33] which are funded by IXCs and other users of interstate access, are incompatible with the 1996 Act. Among other drawbacks, these funding mechanisms do not impose equitable, nondiscriminatory obligations on contributors, do not create direct, explicit, and specific distribution procedures, do not reflect actual underlying cost of providing universal service, and do not grant competitively-neutral opportunities to competing providers. As a result, the USF and DEM methodologies must be replaced with a unitary funding mechanism that is compatible with all the guiding principles in the 1996 Act.

The Commission should adopt several general rules for funding universal service in rural and high-cost regions. First, as the Act makes clear, no universal service support is necessary where rural or high-cost area rates are already "reasonably comparable" to rates in urban areas.[34] Second, existing rural service rates cannot be presumed to be "reasonable" because many rural residents receive service that is set at rates below urban rates. Third, the overall subsidy should be determined by the difference between the reasonable cost of providing the service, and the "reasonably comparable" cost for urban services. The important point is

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[32] 1996 Act, Section 254(b)(1).

[33] 47 U.S.C. § 36.01 et seq. (1995).

[34] See 1996 Act, Section 254(b)(3).

to make sure that the funding mechanism only supports the actual cost of providing service, not a certain carrier's rates or revenue requirements; in the terms expressed in the Notice, the support should be calculated based on "inputs," rather than "outputs."[35] Support also should not be geared to achieve specific end user prices, but rather to ensure that the cost structures of the rural or high-cost areas allow for "affordable" rates charged by several competing carriers. Finally, the contribution levels should be subject to periodic regulatory review, with the goal of decreasing the amount as the advent of competition and newer technologies further decreases the cost of providing local service.

LDDS WorldCom generally supports the joint Benchmark Costing Model ("BCM") approach advocated by MCI, Sprint, and others.[36] The Model establishes a benchmark cost range for certain residential telephone services. Although the BCM is only a proxy model that does not use actual cost data, and although it assumes the continued use of current wireline technology. LDDS WorldCom believes the BCM offers a good starting point for determining how to calculate rural and high-cost subsidy. One caveat is that the results of any cost proxy model adopted by the Commission should be capable of review by all interested parties (and certainly those entities which are required to pay universal service support).

The Notice also seeks comment on a proposed competitive bidding process to set the level of high-cost assistance.[37] While LDDS WorldCom is generally supportive of the

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[35] See Notice at para. 24.

[36] MCI Communications, Inc., NYNEX Corporation, Sprint/United Management Co., and US West, Inc., Benchmark Costing Model: A Joint Submission, CC Docket No. 80-286, filed December 1, 1995.

[37] Notice at paras. 35-36.

concept of competitive bidding as a means of minimizing the level of high-cost assistance needed, it is obvious that, as the Commission observes, "[b]idding to set the level of support payments cannot take place until competitors enter the market."[38] In the absence of competition for high-cost assistance funds, the Commission should retain a compensation plan based on the incumbent LECs' underlying costs of service.

2. Low-Income Consumers

Currently Federal universal service funds are paid out to low-income consumers directly in the form of two plans: (1) the Lifeline Assistance Plan ("Lifeline"), and (2) Link Up America ("Link Up"). Unlike the USF and DEM mechanisms, Lifeline and Link Up are both targeted in a means-tested way to specific low-income consumers.

Under the 1996 Act, the Commission and the states are required to determine exactly who qualifies as a "low-income consumer."[39] The Commission and states also must define what rates would be "affordable" to consumers.[40] As a result, the low-income subsidy required by the Act must be narrowly targeted to serve only low-income consumers. Means-testing is the best method for readily identifying the appropriate group of low-income consumers. The Commission can accomplish this goal in three steps. First, the generally available local service costs and rates can be determined. Second, the appropriate income levels should be established, below which basic service would not be affordable. Third, the subsidy necessary to provide assistance should be calculated. Again, a primary objective should be to subsidize

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[38] Notice at para. 35 n 84.

[39] 1996 Act, Section 254(b)(3).

[40] 1996 Act, Section 254(b)(1).

the actual cost of providing service, not the incumbent LECs' existing revenue requirement.

D. A Broad Universe Of Telecommunications Service Providers, Including Providers Of Telephone Service Over The Internet, Should Contribute To Universal Service

The 1996 Act requires that the Commission identify the appropriate categories of contributors to universal service. LDDS WorldCom believes that this universe of supporters should be the same for rural and high-cost areas as well as for low-income consumers.

The new statute speaks of requiring universal service contributions by "[e]very telecommunications carrier that provides interstate telecommunications services...."[41] In turn, the Act defines "telecommunications carrier" broadly to include "any provider of telecommunications services,"[42] and "telecommunications service" as "the offering of telecommunications for a fee directly to the public."[43] The Commission may only exclude de minimis contributions by a carrier or class of carriers, and may also require "[a]ny other provider of interstate telecommunications" to contribute "if the public interest so requires."[44]

The Notice asks what service providers constitute "telecommunications carriers" under the 1996 Act.[45] On its face, the new statute obligates a wide range of service providers to contribute to universal service, including LECs, IXCs, competitive access providers

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[41] 1996 Act, Section 254(d).

[42] 1996 Act, Section 153(r)(49).

[43] 1996 Act, Section 153(r)(51).

[44] 1996 Act, Section 254(d).

[45] Notice at para. 119.

("CAPs"), and commercial mobile radio service ("CMRS") providers, such as cellular telephone service providers, paging service providers, and personal communications service ("PCS") providers. Each of these groups properly must contribute to universal service funding "on an equitable and nondiscriminatory basis." It is entirely appropriate for all telecommunications carriers, and consequently their customers, to contribute to universal service in order to spread the burden equitably and to sustain the availability of affordable rates for low-income consumers and those consumers living in rural and high-cost regions.

LDDS WorldCom believes that some enhanced service providers ("ESPs") may also meet the statutory definition of a "provider of telecommunications service," and as such would be required to contribute to universal service as a matter of law.[46] The broad statutory language certainly encompasses all types of telecommunications services, including certain online information services provided by ESPs. At present, services provided by ESPs are classified by the FCC as "enhanced services," and hence are exempt from a wide panoply of federal regulations applicable to providers of "basic services" such as long distance carriers.[47] For example, ESPs are not required to pay interstate access charges, and currently are subsidized by IXCs who must pay those charges. Nor are ESPs required to pay any universal service support. The public interest dictates that at least some of these service providers pay their fair

[46] LDDS WorldCom also believes that the FCC should take this perfect opportunity to revisit its earlier decisions exempting ESPs from paying access charges (and the concomitant contribution to universal service included in those charges). Among other reasons why there is no longer any justification for this exemption, it is self evident that the ESP industry today is no longer nascent and is fully capable of paying its fair share of access expense.

[47] 47 C.F.R. § 64.702(a) (1995).

share of universal service subsidies.[48]

At a minimum, a discrete category of entities that provide interstate and international telephone services over the Internet (the so-called Voice-Over-Net, or "VON" service providers) should be required as a matter of law and equity to pay interstate access charges and contribute to universal service funding as a "provider of interstate telecommunications." These entities utilize the currently unregulated medium of the Internet to offer real-time, two-way telephone services to their customers. These new VON services are rapidly becoming functionally indistinguishable from normal long distance telephony, except that VON services usually are free or nominally-priced to the consumer because they do not include interstate access charges, universal service charges, or international accounting settlements. However, VON services to date have never been classified by the FCC as "enhanced services" which are exempt from all requirements to pay carrier-based charges. In fact, VON services are not properly classified as an "enhanced service" under the Commission's three-part test because they: (1) do not act on the subscriber's transmitted information, (2) do not provide the subscriber additional or different information, and (3) do not involve subscriber interaction with stored information.[49] Instead, VON services meet the FCC's definition of a basic, regulated service because they offer 'a pure transmission capability over a communication path that is

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[48] The Notice also seeks comment on whether, as a matter of "public interest," the Commission should exercise its discretion under the statute to extend universal service obligations to "any other provider[s] of interstate telecommunications." Notice at para. 119. Should the FCC decide -- incorrectly -- that the Act doesn't mandate that some types of ESPs must pay universal service funding, in the alternative it should conclude that those ESPs still should be required to contribute to universal service as a matter of public interest.

[49] See 47 C.F.R. § 64 702(a).

virtually transparent in terms of its interaction with customer supplied information."[50] Even if the Commission incorrectly finds that VON services somehow meet the enhanced services definition, VON services still must be classified as "adjunct-to-basic" service under the FCC's NATA Centrex doctrine.[51] This classification certainly would allow the Commission to regulate providers of VON services as "providers of telecommunications service" to the extent necessary to "preserve and advance" the universal service obligation.[52]

Thus, VON services easily meet the statutory definition of a "telecommunications service" and should be required to pay their fair share to support universal service. Otherwise, traditional long distance users may migrate en masse to these artificially priced VON services, thereby bypassing the access charge system altogether and seriously threatening the future of universal service. To prevent this uneconomic bypass of the public switched network, the Commission must require VON providers to pay their universal service obligations.[53]

E. Contributors To Universal Service Should Pay Explicit Surcharges Based On Their Gross Revenues Less Payments To Other Carriers

The 1996 Act requires that contributing telecommunications providers utilize

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[50] See Amendment of Section 64.702 of the Commission's Rules and Regulations, Second Computer Inquiry, Report and Order, 77 FCC 2d 384, 420 (1980).

[51] See, e.g., NATA Centrex Order, 101 FCC 2d 358 (1985).

[52] 1996 Act, Section 254(b)(4).

[53] LDDS WorldCom also believes that the Commission should take swift action on the pending ACTA Petition, and institute a rulemaking which tentatively concludes that VON service providers are required as a matter of law to pay their fair share of interstate access charges and international accounting rate settlements. See ACTA Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking, RM No. 8775, filed March 4, 1996.

"specific, predictable, and sufficient mechanisms established by the Commission...."[54] In addition, the "specific Federal universal service support" must be "explicit."[55]

1. Rural/High-Cost Regions

The current scheme of USF and DEM weighting must be abandoned in favor of an explicit surcharge payable by all telecommunications service providers. To accomplish this, the simplest means of recovering the subsidy would be for the Commission to increase the Subscriber Line Charge ("SLC") to cover the universal service costs. As an alternative, the Commission should create and levy an explicit surcharge based on the gross retail revenues of a telecommunications provider net payments to other carriers.[56] This would be calculated by taking total revenues minus payments made to other carriers, such as access charges and wholesale rates paid by resellers. The Commission has used a similar funding mechanism for its annual regulatory fees structure. This method would, among other things, prevent the double counting of carrier revenues It is also important that this assessment mechanism be applied consistently throughout the country, to prevent the "balkanization" at the state level of the recovery of the universal service contribution.

2. Low-Income Consumers

Currently universal service funds are paid out to low-income consumers directly in the form of the Lifeline and Link Up plans, both of which are largely subsidized by the IXCs through interstate access charges. Neither plan passes muster under the Act's requirement that

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[54] 1996 Act, Section 254(d).

[55] 1996 Act, Section 254(e).

[56] Notice at para. 123.